



July 11, 2016

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth St., SW  
Washington, DC 20554

Re: *In the Matter of Expanding Consumers' Video Navigation Choices, Commercial Availability of Navigation Devices*, MB Docket No. 16-42, CS Docket No. 97-80

Dear Ms. Dortch:

On July 7, 2016, members of the Consumer Video Choice Coalition (“the Coalition”), represented by John Bergmayer of Public Knowledge and Adam Goldberg, consultant to Public Knowledge; Jeff Kardatzke of Google Fiber; Dave Kumar of Goldberg, Godles, Wiener & Wright LLP, counsel to TiVo Inc.; John Howes of CCIA; Ken Plotkin of Hauppauge Computer Works, Inc. and counsel Robert Schwartz of Constantine Cannon LLP; and Ryan Buchanan and the undersigned counsel of INCOMPAS (collectively, the “Coalition representatives”), met with Chief Technologist Scott Jordan; Bill Lake, Mary Beth Murphy, Martha Heller, Steve Broeckaert, Brendan Murray, and Kathy Berthot of the Media Bureau; Susan Aaron of the Office of the General Counsel; and Antonio Sweet of the Office of Strategic Planning & Policy Analysis. Joseph Weber of TiVo Inc. and Brad Love of Hauppauge Computer Works, Inc. participated by phone.

The Coalition representatives reiterated recommendations provided to the Chairman’s Office in a July 1<sup>st</sup> ex parte letter<sup>1</sup> for how a recently reworked proprietary app proposal<sup>2</sup> (“MVPD Proposal”) could be modified to be consistent with the goals of the Commission’s

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<sup>1</sup> Letter from Robert S. Schwartz, Constantine Cannon LLP, to Marlene H. Dortch, FCC, MB Docket No. 16-42, CS Docket No. 97-80 (July 1, 2016).

<sup>2</sup> Letter from Paul Glist, Davis Wright Tremaine LLP, to Marlene H. Dortch, FCC, MB Docket No. 16-42, CS Docket No. 97-80 (June 17, 2016) (“NCTA Letter”).

Notice of Proposed Rulemaking (“NPRM”).<sup>3</sup> Specifically, the Coalition observed that technology outlined in the MVPD Proposal could be technically consistent with and “bolted on to” the CVCC Technical Appendix,<sup>4</sup> a standards-based approach to implementing the Discovery, Entitlement, and Content delivery information flows essential to enable a fully competitive user experience.

The Coalition representatives also discussed concerns with the MVPD Proposal provided in greater detail in the Coalition’s July 1<sup>st</sup> ex parte letter. In particular, as discussed in the NPRM,<sup>5</sup> the goal of an interoperable, competitive, and secure IP-based solution requires a fully independent user interface (“UI”). Sufficient information must pass through the UI to enable manufacturers and app developers to create competitive products that provide their own Electronic Program Guide and grid of programs to which the subscriber has rights—*features that the MVPD Proposal appears to lack*. In its present form, to the extent implementable, the MVPD Proposal would deny subscribers the present and future benefit of competition in the offer, choice, recording, and presentation of programming. Moreover, it would obstruct and complicate the path for potential competitive entrants by, for example, requiring retail manufacturers to negotiate separate, undefined “commercially reasonable” agreements with each MVPD—making an economically viable and competitive retail market extremely difficult, if not impossible.<sup>6</sup>

The Coalition representatives pledged their continued work with the Commission toward achieving the goal of competition in the navigation devices market and providing consumers with meaningful choice in the display, selection, and use of video programming for which MVPD subscribers have paid.

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<sup>3</sup> *In the Matter of Expanding Consumers’ Video Navigation Choices, Commercial Availability of Navigation Devices*, MB Docket No. 16-42, CS Docket No. 97-80, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 16-18, at 2, ¶ 1 (rel. Feb. 18, 2016) (“NPRM”).

<sup>4</sup> See Technical Appendix To CVCC Comments, MB Docket No. 16-42, CS Docket No. 97-80 (filed Apr. 22, 2016).

<sup>5</sup> NPRM at 8, ¶ 12 (noting that “competition in the user interface and complementary features is . . . essential to the goals of Section 629”).

<sup>6</sup> See generally 47 U.S.C. § 549(a).

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This letter is being provided to your office in accordance with Section 1.1206 of the Commission's rules.

Respectfully submitted,

*Consumer Video Choice Coalition*

/s/ Christopher L. Shipley  
INCOMPAS

Cc:

Scott Jordan  
Bill Lake  
Martha Heller  
Mary Beth Murphy  
Steve Broeckaert  
Brendan Murray  
Kathy Berthot  
Susan Aaron  
Antonio Sweet